



**Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Carnes Construction, Inc.

**File:** B-241778

**Date:** February 26, 1991

Karen S. Haller, Esq., and John E. Kofron, Esq., Jones, Edwards, Smith & Kofron, for the protester. Brenda J. Lee, Esq., for Lloyd Construction Co., Inc., an interested party. Lester Edelman, Esq., Department of the Army, for the agency. Sabina K. Cooper, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### **DIGEST**

1. A bidder may not revise its bid price when granting a bid acceptance period extension, since to do so would be tantamount to submitting a second bid after bid opening contrary to competitive bidding principles.
2. An agency may allow a bidder to extend its bid acceptance period and revive its expired bid where the bidder initially offered the acceptance period required by the solicitation and has not expressly or impliedly declined a request to extend its bid; the other bidders had voluntarily taken their bids out of consideration for award; and revival of the bid would not compromise the integrity of the competitive bidding process.
3. Cancellation of invitation for bids after bid opening is not appropriate where a third low revived bid was determined to be reasonable by the contracting officer after the two low bidders conditioned their bid extensions on price increases, given that the bid price at issue was less than 10 percent above the original low bid, less than 3 percent above the low bidder's proposed revised bid and 35 percent below the government estimate.

### **DECISION**

Carnes Construction, Inc. protests the proposed award of a contract to Lloyd Construction Co., Inc. under invitation for bids (IFB) No. DACA05-90-B-0008, issued by the Department of the Army, Corps of Engineers, Sacramento District, for the construction of a parachute training and testing facility at Davis-Monthan Air Force Base, Arizona. Carnes argues that it

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was improper for the Army to allow Lloyd to extend its bid beyond the initial 30-day acceptance period, and that the Army should therefore either allow Carnes to revive its bid with a price increase or cancel the IFB and resolicit the project.

We deny the protest.

The IFB, issued December 12, 1989, called for the construction of a training complex, including a building, covered storage area, road and parking lot. The IFB specified that bids providing less than 30 calendar days for government acceptance after the date bids are due would be rejected. The Army received 8 bids by the January 17, 1990, bid opening. Carnes submitted the apparent low bid at \$1,764,000. Another bidder submitted the second low bid of \$1,776,000. Lloyd submitted the third low bid of \$1,931,000.

On January 24, the Secretary of Defense imposed a moratorium on the expenditure of Army military construction funds until April 30, and again until June 15. As a result, the Army requested that the first and second low bidders extend their bids for 90 calendar days, initially until May 17 and later until June 21. Both bidders agreed to the first extension but refused to extend their bids further. Since the two low bidders refused to extend their bids, the Army turned to Lloyd, the third low bidder, requesting that Lloyd revive and extend its bid until June 30, and later until November 30 when the moratorium was extended. Lloyd so agreed on May 25.

On October 10 the contracting officer asked the two low bidders to consider reviving and extending their bids. Both bidders declined to do so, but Carnes, by letter of October 11, explained that it would be interested in the contract if it could increase its price by \$115,027, which would bring its bid to \$1,879,027, in comparison to Lloyd's \$1,931,000. By telephone Carnes suggested to the Army that the procurement be converted from sealed bidding to negotiation procedures so that discussions could be held with the three lowest bidders.

On October 16, the Army received funding for the solicitation, and, on October 22, the contracting officer informed Carnes that the procurement would not be converted to negotiated procedures. Carnes subsequently protested the proposed award to Lloyd to our Office.

Carnes first argues that it should be allowed to revive its bid with a price increase since its revised bid would remain lower than Lloyd's bid. We disagree. Bidders may not revise their bid prices when granting a bid acceptance period extension, since to do so would be tantamount to submitting a second bid after bid opening contrary to competitive bidding

principles. GTA Containers, Inc., B-234395.3, July 12, 1989, 89-2 CPD ¶ 37. In essence, Carnes' request to revive its bid with a price increase constitutes a refusal to extend its bid acceptance period further, thereby rendering it ineligible for award. Id.

Carnes alternatively contends that, if it is not allowed to revive its increased bid, the Army should cancel the IFB and resolicit the requirement rather than permit Lloyd to revive its expired bid 4 months after bid opening.

The Federal Acquisition Regulation (FAR) provides that in the event that an agency encounters administrative difficulties after bid opening that would delay award beyond bidders' acceptance periods, the several lowest bidders should be requested, before expiration of their bids, to extend their acceptance period in writing in order to avoid the need for resoliciting. FAR § 14.404-1(d). Indeed, an agency may even allow a bidder to extend its acceptance period and revive an expired bid where the bidder offered the acceptance period required by the IFB, has not expressly or impliedly declined a request to extend its bid, and revival of the bid would not compromise the integrity of the competitive bidding process. See US Rentals, 69 Comp. Gen. 395 (1990), 90-1 CPD ¶ 367; Grace Ind., Inc., B-229548.2, Dec. 23, 1987, 87-2 CPD ¶ 623. Since expiration of the acceptance period confers on the bidder a right to refuse to perform a contract subsequently awarded, a bidder may waive such right if, following expiration of the acceptance period, the bidder is still willing to accept an award on the basis of the bid as submitted. Isometrics, Inc., B-204556, Apr. 13, 1982, 82-1 CPD ¶ 340.

Here, Lloyd's original bid offered the acceptance period required by the IFB, as did Carnes' bid. Although the Army did not initially request that Lloyd extend its bid, since it was the third low bidder, when the Army did specifically request that Lloyd revive its bid after Carnes and the second low bidder refused to extend, Lloyd agreed to revive its bid as originally submitted. Thus Lloyd did not expressly or impliedly decline an agency request to extend its bid.

Moreover, Lloyd did not have a duty to voluntarily extend its bid before expiration. Because Lloyd was the third low bidder, we do not think that Lloyd had any reason to assume it would be awarded a contract since there were two lower bids. Thus, there was no reason for Lloyd to spontaneously grant an extension of its bid prior to the February 17 expiration date when the agency had not so requested. When the two low bidders, both of whom had agreed to the Army's request for an extension until May 17, refused to agree to a second extension until June 21, the Army properly turned to Lloyd, who

promptly agreed to an extension of its bid as originally submitted until June 30, and when again so requested, until November 30. Lloyd thus assumed the risks of the marketplace for the period. See Isometrics, B-204556, supra.

With respect to whether allowing Lloyd to revive its bid would compromise the integrity of the competitive bidding process so as to require cancellation of the IFB and resolicitation, we find that the Army properly permitted Lloyd to revive its expired bid under the present circumstances. Since the contracting officer provided the opportunity to the two lowest bidders to extend their bids for a second time in early October, and those bidders refused, neither of those bidders can claim to be prejudiced by the third low bidder reviving its bid since the agency extended the same opportunity to all bidders and both Carnes and the second low bidder voluntarily took their bids out of consideration for award. Rubbermaid, Inc., B-238631, May 2, 1990, 90-1 CPD ¶ 444; TLC Sys., B-231969, Sept. 13, 1988, 88-2 CPD ¶ 238.

Carnes further argues that the solicitation should be canceled because 9 months has elapsed between bid opening and the Army's decision to award the contract to Lloyd, and, due to price increases caused by inflation during that period, award to Lloyd would be unfair to the other bidders. While an agency is required to award a contract with reasonable promptness, the 9-month period from bid opening to decision to award resulted from a moratorium on the expenditure of military construction funds for the Army, a factor outside the Agency's control. The case cited by the protester, San Diego Aircraft Eng'g, Inc., B-217208, Mar. 25, 1985, 85-1 CPD ¶ 347, in support of its position, deals with an agency's obligation to revive an expired bid after a contract rescission by the awardee due to a mistake in bid and does not apply here to show prejudice to Carnes, since all bidders were equally affected by the agency's administrative delay. The fact that Carnes' proposed increased bid price is lower than Lloyd's original bid price would not justify reprourement. To do so would be tantamount to the conduct of an auction, in which a bidder, knowing the original prices of others, would have an opportunity to bid again for the identical items. American Fuel Cell and Coated Fabrics Co.--Recon., B-234395.2, Mar. 21, 1989, 89-1 CPD ¶ 290.


Carnes finally contends that the IFB should be canceled because Lloyd's price is unreasonable in light of the fact that lower prices would be received on a resolicitation. We also find this argument unpersuasive.

In order to preserve the integrity of the sealed bid system, FAR § 14.404-1(a)(1) requires that award be made to the lowest responsible bidder unless there is a cogent and

compelling reason to reject all bids. Receipt of unreasonably high bid prices is such a reason. FAR § 14.404-1(c)(6). The determination of price reasonableness is within the discretion of the contracting officer, and we will not disturb that determination unless it is unsupported or there is a showing of fraud or bad faith on the part of the contracting officials. G. Marine Diesel Corp., B-238703, B-238704, May 31, 1990, 90-1 CPD ¶ 515.

Here, we find that the record clearly supports the contracting officer's determination to revive Lloyd's bid instead of canceling the IFB and resoliciting. Since Lloyd's price is 35 percent below the government estimate, and only about 9.5 percent above Carnes' original low bid price, it would have been unreasonable to conclude that Lloyd's price is too high. Indeed, Lloyd's price is only 2.8 percent above Carnes' proposed increased bid price, i.e., the price for which Carnes believes it can now perform the work. Compare Color Dynamics, Inc., B-236033.2, Oct. 27, 1989, 89-2 CPD ¶ 391, aff'd, B-236033.3, Dec. 22, 1989, 89-2 CPD ¶ 583, where the solicitation was canceled since the third low bid price was considerably higher than the original and revised prices offered by the two lower bidders whose bids were rejected as nonresponsive because they conditioned their bid extensions on price increases.

The protest is denied.

  
for James F. Hinchman  
General Counsel